

DEMETRIOS "JIMMY" HARALAMBUS 9/18/2014

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CLINTON HENDERSON and)
ANDREW OLINDE,)
individually and on)
behalf of all other)
similarly situated)
individuals,)
)
Plaintiffs,) CIVIL ACTION NO.
)
vs.) 1:13-CV-3767-TWT
)
1400 NORTHSIDE DRIVE,)
INC. d/b/a SWINGING)
RICHARDS, AND C.B.)

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JONES,)
)
Defendants.)

THIS DEPOSITION CONTAINS INFORMATION DESIGNATED
CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

DEPOSITION OF DEMETRIOS "JIMMY" HARALAMBUS

(Taken by Plaintiffs)

September 18, 2014

10:00 a.m.

Suite 2700
260 Peachtree Street
Atlanta, Georgia

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1 DEMETRIOS "JIMMY" HARALAMBUS,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. LUKAS:

6 Q. Will you please state your full name,
7 spelling it for the record?

8 A. Haralambus, Jimmy Haralambus, J-I-M-M-Y,
9 H-A-R-A-L-A-M-B-U-S.

10 MR. LUKAS: And Herb, you want to put
11 something on the record?

12 MR. SCHLANGER: Yeah. Mr. Haralambus is
13 a certified public accountant, and he -- one
14 of his clients is the defendant in this
15 action.

16 He has not been subpoenaed -- he has not
17 been noticed as a 30(b)(6) deposition
18 witness for the club, and attorn -- and
19 accountant-client communications are
20 privileged in Georgia.

21 Rather than doing it question by
22 question, I believe we've agreed that I will
23 not object on attorney-client privilege --

24 MS. MURPHEY: Accountant-client
25 privilege.

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1 beginning of 2001.

2 Q. And what is your current title?

3 A. Just a manager.

4 Q. How many accountants does Seth Twum &
5 Company have?

6 A. He's the partner, and we've got one more
7 bookkeeper/accountant. But he's not qualified as a
8 C.P.A.

9 Q. So there's two C.P.A.s, you and Seth?

10 A. That is correct.

11 Q. And you've been with Seth then ever since
12 you became a C.P.A. in the United States?

13 A. That is correct.

14 Q. And are you currently a partner?

15 A. I am seen as a partner, but officially
16 not.

17 Q. Do you have an ownership interest?

18 A. I do not.

19 Q. And what is the nature of your current
20 practice, your C.P.A. practice?

21 A. We mainly do write-ups, financial
22 statements, and once in a while we'll do
23 compilation reports, but no auditing.

24 Q. No aud --

25 A. No. Due to the staff limitations. And

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1 A. That is correct.

2 Q. And then was it a C.P.A. that was working
3 with her to do the taxes?

4 A. No -- yes, it was a C.P.A. It was Pechter
5 & Company. He never came to the office. They sent
6 everything to him.

7 Q. And all they sent to him was the bank
8 statements and the --

9 A. And a sales summary for the month.

10 Q. And then how did you change that? What
11 did you do to change that?

12 A. I wasn't happy with that system. I said
13 to them, you have opened yourself to liability.
14 First of all, you're not recording. You don't have
15 an audit trail. You've put yourself at risk. You
16 are handling so much cash and, if money goes
17 missing, there's no way to trace it to anyone. And
18 I said, we need to implement procedures.

19 So I started developing a spreadsheet
20 where we recorded -- we split up the revenue into
21 liquor, beer and wine, soda -- so do you want me to
22 slow down or can I just carry on speaking?

23 Q. Well, why don't we -- let me do this. So
24 you developed a spreadsheet to capture what you
25 felt needed to be captured?

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1 A. That is correct.

2 Q. And let's take -- and maybe I can show you
3 a spreadsheet that I have from them, and maybe
4 that's the spreadsheet you're talking about.

5 A. That is correct.

6 Q. Let's see.

7 MR. LUKAS: So what I've done here,
8 Counsel, is I've basically taken all the
9 financials, which was the last batch of
10 documents you produced to me, which are
11 Bates stamped number SR 02094 through SR
12 002131.

13 Later on during the depo, if it becomes
14 necessary to split them out into separate
15 exhibits, we can. But I thought we'd just
16 put them all in one exhibit and I'll just
17 refer to the page number. If that becomes a
18 hassle, you let me know.

19 Go ahead and mark that.

20 (Whereupon, Plaintiff's
21 Exhibit 5 was marked.)

22 BY MR. LUKAS:

23 Q. Mr. Haralambus, I'm showing you what's
24 been marked as Plaintiff's Deposition Exhibit
25 Number 5. I'd like you to turn to Page 21005

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1 (sic). It should be the whole back section of that
2 document, where it starts the whole back section of
3 that.

4 A. I'm sorry. 21?

5 Q. 2105.

6 A. Yes. I've got it.

7 Q. Is this the spreadsheet you developed that
8 you were testifying to?

9 A. That is correct.

10 Q. So is this a spreadsheet you developed for
11 Karen to enter things into or for you to enter
12 things into?

13 A. This was developed for the bookkeeper,
14 whether it was her or someone else, to enter the
15 information into.

16 Q. Oh, that's right. Karen wasn't there at
17 the time?

18 A. That is correct.

19 Q. So you developed this spreadsheet so that
20 the bookkeeper would keep accurate records of
21 basically the flow of money?

22 A. That is correct. For every day.

23 Q. Do you know what this is called or what
24 the bookkeeper currently calls this?

25 A. I call this a daily summary sheet.

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1 we're talking about liquor, beer, wine, soda, door
2 and total?

3 A. That section over there refers to working
4 out sales tax and liquor tax. Liquor tax, beer,
5 wine, soda and door is subject to sales tax.
6 Liquor tax would be only for liquor and wine.

7 So if you look at the top number, the top
8 line, you'll see 73,062 and 75 cents. That is a
9 total of the 57,041 and 25 cents and 16,021.50. If
10 you add them together, it should come to that.

11 Q. I'm sorry. I lost you. Where is the
12 number that that should come to?

13 A. 57,000 plus your 16,000 comes to 73,062
14 and 75 cents. Okay?

15 Q. Okay.

16 A. And I take out the -- then I work out the
17 liquor tax from that, which comes to 2,128 dollars
18 and four cents.

19 Q. But there's liquor tax only on liquor.
20 You said liquor and wine?

21 A. Beer and wine, yeah.

22 Q. Oh, so there's liquor tax on liquor, beer
23 and wine?

24 A. That is correct.

25 Q. And if you add the 57,000 for liquor and

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1 the 16 some thousand for beer and wine, that's
2 where we get the 73,062.75?

3 A. That is correct.

4 Q. But you don't apply the liquor tax to that
5 74,000 dollar number?

6 A. I will bring -- what I do, I'll work out
7 the liquor tax at 3 percent, and then I'll take it
8 out.

9 Q. And that's what the 2,128 dollars and four
10 cents is is the actual tax?

11 A. That is the actual tax, yeah.

12 Q. And when you back that out of the
13 liquor --

14 A. Right.

15 Q. -- it's --

16 A. It's 54,000. Then you've got 16,000.
17 Right? And from these totals I will back out the
18 sales tax.

19 Q. And that's where we get the
20 50,845 dollars --

21 A. That is correct.

22 Q. -- and 46 cents for liquor, and the 14,834
23 dollars and 72 cents for beer and wine?

24 A. That is correct.

25 MR. SCHLANGER: Jimmy, let him finish

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1 his question. Pause after he asks the
2 question. Okay?

3 THE WITNESS: Sorry about that.

4 MR. SCHLANGER: That's okay.

5 BY MR. LUKAS:

6 Q. And you do the same equation with soda,
7 because there's a sales tax on that; correct?

8 A. There is not a sale -- yes, there is a
9 sales tax on soda.

10 Q. And there's a sales tax on the door
11 charge?

12 A. That is correct.

13 Q. And after you back out the taxes for these
14 items, then you put them down in this other ledger
15 down below; is that correct? Or I'm sorry, the
16 bookkeeper does?

17 A. That is correct.

18 Q. And that's why the liquor number down
19 below here is -- first of all, what does DR and
20 what does CR stand for?

21 A. Debit, credit.

22 Q. So and that's why in the credit column we
23 have 50,845 dollars and 56 cents for liquor,
24 because that's the liquor after the sales tax is
25 paid?

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1 the sum total for November 2011 of the club's share
2 or the club's room rental for those V.I.P. rooms?

3 A. That is correct.

4 Q. Let's talk about the next one, fines.
5 What's that?

6 A. I'm just -- the way it was explained to me
7 is the dancers had contracted saying that they
8 would be there at a specific time. And if they
9 were late, they paid monies to the club. I
10 terminated it fine. That was my terminology, fine.
11 I said, that's it, okay, it's a fine.

12 Q. Well, they call it a fine in the agreement
13 with the employee, too, don't they?

14 A. Yeah. Well, exactly. When they came to
15 me and they said this is a fine, I said, okay, we
16 will leave it "fine" then.

17 Q. So that's not your phrase "fine," that's
18 their phrase "fine"?

19 A. I'm just trying to recall. I would say
20 so, yes.

21 Q. I mean, you didn't make up these -- I
22 mean, you labeled them, but they told you what
23 these monies were for; right?

24 A. Yes.

25 Q. They had to explain to you --

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1 A. Yes.

2 Q. -- where these streams of income were
3 coming from; correct?

4 A. Yeah. They just -- yes. I would just say
5 yes.

6 Q. And is it your understanding that the
7 dollar amount in that for fines was just for being
8 late or were there other fines that were included
9 in that, if you know?

10 A. From what I understand, only for being
11 late.

12 Q. So in November of 2011, there was
13 3,575 dollars collected from dancers for being
14 late?

15 A. Yes.

16 Q. And then the next one says food. What's
17 that?

18 A. I set up a system just in case they were
19 selling food, that would be a -- that would go in
20 that slot.

21 Q. But they weren't selling food in November
22 of 2011; correct?

23 A. They do not sell food.

24 Q. They still don't?

25 A. They still don't.

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1 was it just Mr. Jones?

2 A. Just Mr. Jones.

3 Q. And was he the one that okayed this
4 system?

5 A. He has looked at it, yes. And I presume
6 he was happy with it.

7 Q. You're still their C.P.A.; correct?

8 A. Yes.

9 Q. What about tip out, what does "tip out"
10 mean?

11 A. I'm just going blank for a second.

12 Q. Maybe I can help you. Is that the house
13 fee that the dancers pay every night?

14 A. That is correct. That is correct. That's
15 the dancers, yeah.

16 Q. What's your understanding of what that
17 payment is for?

18 A. For allowing to dance there. That's the
19 way I understood it.

20 Q. Gratuity, what is that line for?

21 A. That's --

22 Q. Now, that one, the previous ones we talked
23 about were all in the credit column, now we move
24 over to the debit column. What is gratuity and why
25 is it in the debit column?

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1 Q. And that's just credit card V.I.P. room
2 payments; correct?

3 A. That is correct.

4 Q. So the cash paid to entertainers for their
5 services in the V.I.P. rooms is not captured
6 anywhere in your system; correct?

7 A. No, it is not.

8 Q. And in fact, the cash collected by the
9 employ -- or the dancers for dances they do outside
10 of the V.I.P. room, whether it be on the floor or
11 on the stage, is not captured anywhere in your
12 system either; correct?

13 A. That is correct.

14 Q. What's the next line, SVCH?

15 A. Service charge.

16 Q. And what is service charge?

17 A. Service charge comprises of two items.

18 The first item is when the patron gets charged 5 or
19 10 percent for the monies he wants from the A.T.M.
20 that's not there, so the employee will give him
21 cash from the register. That small percentage will
22 go in that column.

23 The other one is when the patron will be
24 charged an extra 10 percent for the room.

25 Q. And that 10 percent the customer is

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1 charged for using a credit card, it's just when
2 they use a credit card; correct?

3 A. That is correct.

4 Q. And that 10 percent is reflected in -- oh,
5 I'm sorry. The 2,807 dollars, that's what's
6 captured there in the SVCH line?

7 A. That is correct.

8 Q. And is it your understanding it's
9 10 percent for the room rental piece or for the
10 piece that the entertainer gets or both?

11 A. From what I understand, only for the room.

12 Q. And is it your understanding that, prior
13 to -- oh, going back to the entertainer money where
14 it's 28,135 --

15 A. Yes.

16 Q. -- what is your understanding of how the
17 entertainer receives that money, the credit card --

18 A. The total amount gets captured in this
19 column here; right?

20 Q. Right.

21 A. At the end of the day, at the end of the
22 evening, an IOU slip is attached to the batch
23 report of the night. A check will then be made out
24 to the entertainment to equalling 90 percent of
25 that amount.

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1 Q. I see. So there's 10 percent taken off of
2 that piece as well?

3 A. It's only that 10 percent that -- yeah.

4 Q. But that's not -- the customer is not
5 paying that, that's coming out of the --

6 A. Dancers.

7 Q. -- the dancers' money that they were
8 getting?

9 A. That is correct.

10 Q. So there's sort of two charges, there's a
11 10 percent service charge to the customer for the
12 room piece of the rental; correct?

13 A. Yes.

14 Q. And then the customer pays whatever the
15 entertainer amount is; correct?

16 A. That is correct.

17 Q. And then when the bookkeeper goes to cut
18 the check the next day, another 10 percent is
19 backed out because the customer paid the
20 entertainer with a credit card?

21 A. That 10 percent is actually like a
22 processing fee, the way we see it.

23 Q. I see. So you're charging 10 percent just
24 for the room piece, and then you're charging
25 10 percent to the dancer on the V.I.P. amount -- or

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1 BY MR. LUKAS:

2 Q. So Karen enters the numbers into the
3 system so that it generates a daily report that
4 resembles this; correct?

5 A. The spreadsheet has a big -- they've got
6 amounts. They've got cash registers, bank one,
7 bank two, bank three, bank four. They've got a
8 section for V.I.P. room, the cash. They've got for
9 the door. They've got for the fines and that.

10 Then what happens is the monthly will feed
11 into each of these cells and draw those amounts in.

12 Q. Just like this monthly draws in the
13 dailies, this one we're looking at to 2119 draws in
14 all the monthlies in these same categories that we
15 discussed?

16 A. That -- no. That I created myself for
17 Susan to understand.

18 Q. Oh, I see.

19 A. Yeah.

20 Q. So this document we're looking at, the SR
21 2119, that's something that you created special for
22 this lawsuit?

23 A. That is correct.

24 Q. I see. In your normal system, you don't
25 have an annual summary?

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1 A. That is correct.

2 Q. And this is something you did in
3 connection with the lawsuit?

4 A. That is correct.

5 Q. I see. Not something that is normally
6 done?

7 A. That is correct.

8 Q. So going back to the cover again so we're
9 talking about the same thing, SR 2105 -- I'm sorry.
10 It's not the cover in the one you're looking at.

11 A. That's okay. Yeah.

12 Q. Going back to that, Karen's spreadsheet
13 from which this pulls is different, it looks
14 different than this because it has drawers and so
15 forth; correct?

16 A. That is correct.

17 Q. I don't believe I have that.

18 MS. MURPHEY: No. I told you we had
19 daily for the last three years, but it's a
20 huge amount of documents, and I was going to
21 give you the monthly summaries and the
22 annual summaries. And if you felt you
23 needed more than that --

24 MR. LUKAS: I think I would like to see
25 the daily, just an example of a daily, maybe

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1 that matches with this one probably since we
2 talked about this one, sometime in November
3 of 2011, you give me a daily or two just so
4 that I know what they look like, Susan.

5 MS. MURPHEY: Okay.

6 MR. LUKAS: And then if I need more,
7 I'll come dig through your boxes, I guess.

8 BY MR. LUKAS:

9 Q. Thank you. I think I understand that.
10 And then as we page through the rest of
11 this document, it appears to be these monthly
12 summaries which are created in the normal course of
13 business?

14 A. That is correct.

15 Q. All right. Let's stay on Exhibit 1 (sic).

16 MR. SCHLANGER: Four (sic).

17 THE REPORTER: Five, actually.

18 MR. LUKAS: Oh, I'm sorry. Five. None
19 of us have it right.

20 BY MR. LUKAS:

21 Q. Sorry. I'm trying to find my copy where I
22 wrote all over them. Ah, here we go.

23 Is your cover page or the top page on
24 Plaintiff Deposition Exhibit 5, is it SR 2094?

25 A. Yes.

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1 Q. Payroll tax expense, what's that?

2 A. Payroll tax expense are your W-2
3 employees, the portion of the tax expense, the
4 U.R.F., the -- that's the unemployment, federal,
5 state, the FICA taxes.

6 Q. And the company -- or the Northside Drive
7 does not pay that on the dancers; correct?

8 A. That is correct.

9 Q. So this does not include the dancers?

10 A. That is correct.

11 Q. Does it include the general manager, Matt?

12 A. If he's on the payroll, yes, it does.

13 Q. Do you know whether that Matt's income is
14 even recorded, or compensation is even recorded in
15 the system anywhere?

16 A. I don't do day-to-day operations as such.
17 I'm not that -- I don't go that deep into it, so I
18 would have to find out.

19 MR. SCHLANGER: So the answer is you
20 don't know?

21 THE WITNESS: I don't know.

22 BY MR. LUKAS:

23 Q. So who's responsible for payroll?

24 A. Now, Karen will call in the payroll with
25 A.D.P. (sic), and she will request X amount of

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1 entertainers and waiters for the 479,000 --

2 A. Yes.

3 Q. -- the 380,000 or so of that is for the
4 dancers' portion of the credit card V.I.P. room;
5 correct?

6 A. That is correct.

7 Q. And 79,000 and some change is -- captures
8 the credit card tips paid out in cash to waiters
9 and bartenders?

10 A. That is correct.

11 Q. And the paid-out to waiters is captured on
12 the tax form because it's backed out of the gross
13 receipts, it's not included; correct?

14 A. That's what I've done.

15 Q. And the independent contractors, 380,000
16 is captured as an additional expense that's
17 deducted; correct?

18 A. That is recorded as an expense.

19 Q. Yes. On the tax form?

20 A. That is correct.

21 Q. And the paid out -- or the waiters and
22 bartenders are W-2 employees, and the independent
23 contractors are treated with a 1099; correct?

24 A. That is correct.

25 Q. And the 1099 is issued only for that

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1 amount, for the credit card payments to the V.I.P.
2 rooms; correct?

3 A. The 1099 is issued for that purpose.

4 Q. And not for any of the cash they receive
5 as compensation for their dancing?

6 A. It is not recorded.

7 Q. Why did you do it that way?

8 A. Excuse me? Why did I --

9 Q. Why did you do it this way? Why didn't
10 you just back out the 380,000 just like you backed
11 out the 79,000 when you're doing the gross
12 receipts?

13 A. Because when the I.R.S. looks at this,
14 they're going to say you've got salaries and wages
15 and you've got 79,000. So they will be asking me
16 for a 1099 for that as well and there won't be one.

17 Q. I see. Because it's paid in -- like we
18 talked about earlier, because it's paid in cash,
19 there's no audit trail and you couldn't approve to
20 the I.R.S. where that money went?

21 A. I can prove to the extent where they've
22 taken it out, that amount. To exactly who it went,
23 the bookkeeper would have a tough time trying to
24 find it, yeah.

25 Q. Well, going back to why you do it this

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1 A. The only time that I would be involved in
2 it, if Karen has a vacation, I would fill in her
3 shoes just accounting for the information. But I
4 don't take care of the day-to-day operations. I
5 don't get involved in that.

6 Q. So --

7 A. She'll make sure that the payroll gets
8 done. I don't get involved with any of that. I'll
9 just help out and just capture that information and
10 that's it.

11 Q. When you say "capture the information," do
12 you mean physically going into the club and opening
13 the safe and all of that?

14 A. That is correct.

15 Q. How often in a year do you do that?

16 A. I may do that about 20 days a year.

17 Q. That's unusual, isn't it, for a C.P.A., or
18 at least for your practice? Do you do that for any
19 other clients?

20 A. No. I don't do it for anyone else.

21 Q. Same with the calling in every day and
22 checking in, that's not something you do?

23 A. Not something I -- C.B., I've known C.B.
24 for a long time. And I don't like to do these
25 things, but he's asked me to just call up and just

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1 check up and just see if everything is okay.

2 Q. And you just do it as a favor to him?

3 A. That is correct.

4 Q. Do you actually see the IOUs or you just
5 see what's captured on the spreadsheet?

6 A. I see the IOUs. Because they're attached
7 to the check stub. I don't necessarily open them
8 up. They are attached to the check stub.

9 Q. And that's part of what you pick up and
10 gather when you make your visits?

11 A. That is correct.

12 Q. And if we took a paycheck stub and we took
13 an IOU and compared them, the paycheck stub should
14 be for the amount on the IOU less 10 percent?

15 MR. SCHLANGER: I object to the
16 characterization as a paycheck.

17 MR. LUKAS: Paycheck stub, I said. It's
18 a check stub. Oh, I see. I'm sorry. I
19 meant check. You're right. I meant check
20 stub.

21 BY MR. LUKAS:

22 Q. That's why you looked at me like that.

23 A. Yes.

24 Q. So if we took the check stub and compared
25 it to the IOU, the check stub should reflect an

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1 I think the record will speak for itself.

2 But go ahead.

3 BY MS. MURPHEY:

4 Q. So we talked about V.I.P. cash and V.I.P.
5 credit.

6 A. Yes.

7 Q. And those numbers represented the room
8 rental fee paid by a patron to the club; correct?

9 A. That is correct.

10 Q. And is that the 40 dollar figure or the 65
11 dollar figure depending on how long they're in a
12 room?

13 A. I don't get involved in setting that fee,
14 so I don't know.

15 Q. But it's your understanding it's a room --
16 a charge paid by the patron to the club?

17 A. That is correct.

18 Q. And then the entertainer expense that you
19 indicated was the, and you I think used the word,
20 the term hundred dollars payment for the dancer's
21 time in the room?

22 A. That is correct.

23 Q. And then the service charge number
24 underneath that represented the 10 percent charge?

25 A. Represented what the patron pays the

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1 10 percent charge.

2 Q. On the hundred dollars?

3 A. On the hundred dollar, yes.

4 Q. So that's -- and so like there, we have
5 28,135, and then the service charge looks like it's
6 approximately 10 percent of that 28,000 dollar
7 figure for 2,800 dollars?

8 A. Yes.

9 Q. So on the income statement, if you go back
10 to 2094, where the service charge is indicated on
11 the revenues line for 52,227.25, that's the
12 10 percent on the dancer's hundred dollars that is
13 charged to the patron?

14 A. That is correct.

15 Q. So it's not a 10 percent on the room, it's
16 a 10 percent on the dancer?

17 A. No, no, no, no. It is a 10 percent on the
18 room. Or not.

19 MR. LUKAS: Room and the dancer.

20 MR. SCHLANGER: No.

21 BY MS. MURPHEY:

22 Q. You just testified that it was 10 percent
23 on the hundred dollar fee paid for the dancer.

24 A. Yes. Yes.

25 Q. And so that represents the 10 percent of

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1 wanted to make sure we were all on the same
2 page.

3 BY MS. MURPHEY:

4 Q. Now, a few more questions, Jimmy. Is
5 there any difference from an accounting standpoint
6 between the credit card payments for that hundred
7 dollar fee for a dancer's time versus cash payments
8 of the hundred dollar fee for credit card time -- I
9 mean, sorry, for entertainer time?

10 A. Could you just rephrase it for me, please?

11 Q. Yes. Is there any difference between the
12 cash payment to -- for 15 minutes of dancer time
13 for a hundred dollars versus a credit card payment
14 of 15 minutes of a dancer's time for a hundred
15 dollars from an accounting standpoint?

16 MR. SCHLANGER: Or should they be
17 treated the same?

18 THE WITNESS: They should be treated the
19 same. They should be treated the same.

20 BY MS. MURPHEY:

21 Q. And is it your understanding that that has
22 been done in the past at Swinging Richards?

23 A. The credit card charge has been recorded.
24 The cash has not.

25 Q. And is there something that's going to be

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